



DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Gray Television, Inc., et al.:

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America v. Gray Television, Inc., Civil Action No. 1:15-cv-02232. On December 22, 2015, the United States filed a Complaint alleging that Gray Television, Inc.'s proposed acquisition of Schurz Communications, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on the same day as the Complaint, requires Gray to divest certain broadcast television stations in South Bend, Indiana and Wichita, Kansas.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the Federal Register. Comments should be directed to David Kully, Chief, Litigation III, Antitrust

Division, Department of Justice, 450 Fifth Street NW, Washington, DC 20530, (telephone: 202-305-9969).

/s/

Patricia A. Brink
Director of Civil Enforcement

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
450 Fifth Street, N.W. Suite 7000
Washington, D.C. 20530

Plaintiff,

v.

GRAY TELEVISION, INC.,
4370 Peachtree Road, NE
Atlanta, GA 30319

and

SCHURZ COMMUNICATIONS, INC.,
1301 E. Douglas Road
Mishawaka, IN 46545

Defendants.

CASE NO. 1:15-cv-02232

JUDGE: Rudolph Contreras

FILED: 12/22/2015

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States brings this civil action to enjoin the acquisition by Gray Television, Inc. (“Gray”) of Schurz Communications, Inc. (“Schurz”) and to obtain other equitable relief.

I. NATURE OF THE ACTION

1. Gray and Schurz own and operate broadcast television stations in multiple Designated Market Areas (“DMAs”) in the United States.

2. Gray's and Schurz's television stations compete head to head for the business of local and national companies that seek to advertise on broadcast television stations in the South Bend, Indiana DMA, and the Wichita, Kansas DMA.

3. In the South Bend, Indiana DMA, the two broadcast television stations that Gray and Schurz operate account for approximately 67 percent of all broadcast television station gross revenues in that DMA.

4. In the Wichita, Kansas DMA, the three stations that Gray and Schurz operate account for approximately 57 percent of all broadcast television station gross advertising revenues in that DMA.

5. Pursuant to an Asset Purchase Agreement dated September 14, 2015, Gray agreed to acquire Schurz for approximately \$440 million.

6. If consummated, the proposed acquisition would eliminate the substantial head-to-head competition between Gray and Schurz in the South Bend, Indiana DMA, and the Wichita, Kansas DMA (collectively "the DMA Markets"). Unless enjoined, the proposed transaction is likely to lead to higher prices and substantially lessen competition for broadcast television spot advertising in each of the DMA Markets in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. JURISDICTION, VENUE, AND COMMERCE

7. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Gray and Schurz from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

8. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9. Gray and Schurz are engaged in interstate commerce and in activities substantially affecting interstate commerce. They each own and operate broadcast television stations in various locations throughout the United States and sell television advertising for those stations. Their television advertising sales have had a substantial effect upon interstate commerce.

10. Defendants have consented to venue and personal jurisdiction in this District. Therefore, venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

III. THE DEFENDANTS

11. Gray is incorporated in the state of Georgia, with its headquarters in Atlanta, Georgia. Gray reported operating revenues of over \$508 million for the year ended December 31, 2014. As of February 1, 2015, Gray owned and operated broadcast television stations in 44 geographic markets. It owns and operates broadcast television stations in each of the DMA Markets.

12. Schurz is a privately owned radio, television, cable TV and newspaper company, with its headquarters in Mishawaka, Indiana. Schurz owns and operates 10 broadcast television stations in 7 markets. It also owns and operates broadcast television stations in each of the DMA Markets.

IV. RELEVANT MARKET

13. The relevant market for Section 7 of the Clayton Act is the sale of television spot advertising to advertisers targeting viewers in each of the DMA Markets.

14. A DMA is a geographical unit for which A.C. Nielsen Company, a firm that surveys television viewers, furnishes broadcast television stations, advertisers, and advertising

agencies in a particular area with data to aid in evaluating audience size and composition.

DMA's are widely accepted by television stations, advertisers, and advertising agencies as the standard geographic area to use in evaluating television audience size and demographic composition.

15. Gray and Schurz sell television advertising to local and national advertisers in each of the DMA Markets. Gray and Schurz television stations in each of the DMA Markets generate almost all of their revenues by selling advertising to local and national advertisers who want to reach viewers in those markets. Spot advertising placed on television stations in a DMA is aimed at reaching viewing audiences in that DMA, and television stations broadcasting outside that DMA do not provide effective access to those audiences.

16. Spot advertising differs from network and syndicated television advertising. In contrast to spot advertising sales, television networks and producers of syndicated programs sell network and syndicated television advertising on a nationwide basis for broadcast in every market where the network or syndicated program is aired.

17. Broadcast television stations attract viewers through their programming, which is delivered for free over the air or retransmitted to viewers, primarily through wired cable or other terrestrial television systems and through satellite television systems. Broadcast television stations then sell advertising to businesses that want to advertise their products to television viewers. A television station's advertising rates typically are based on the station's ability, relative to competing television stations, to attract viewing audiences that have certain demographic characteristics that advertisers want to reach.

18. Broadcast television spot advertising possesses a unique combination of attributes that set it apart from advertising using other types of media. Television combines sight, sound,

and motion, thereby creating a more memorable advertisement. Moreover, of all media, broadcast television spot advertising generally reaches the largest percentage of all potential customers in a particular target geographic area and is therefore especially effective in introducing, establishing, and maintaining the image of a product. For a significant number of advertisers, broadcast television spot advertising, because of its unique combination of attributes, is an advertising medium for which there is no close substitute. Other media, such as radio, newspapers, or outdoor billboards, are not desirable substitutes for broadcast television advertising. None of these media can provide the important combination of sight, sound, and motion that makes television unique and impactful as a medium for advertising.

19. Like broadcast television, subscription television channels such as those carried over cable or satellite television combine elements of sight, sound, and motion, but they are not a desirable substitute for broadcast television spot advertising for two important reasons. First, broadcast television can reach well over 90 percent of homes in a DMA, while satellite, cable and other subscription services often reach many fewer homes. Even when several subscription television companies within a DMA jointly offer cable television spot advertising through a consortium called an interconnect, cable spot advertising does not match the reach of broadcast television spot advertising. As a result, an advertiser can achieve greater audience penetration through broadcast television spot advertising than through advertising on a subscription television channel. Second, because subscription services may offer more than 100 channels, they fragment the audience into small demographic segments. Because broadcast television programming typically has higher rating points than subscription television programming, broadcast television provides a much easier and more efficient means for an advertiser to reach a high proportion of its target demographic.

20. While media buyers often buy advertising on subscription television channels, they do so not as a substitute for broadcast television spot advertising, but rather as a supplement, in order to reach a narrow demographic (e.g., 18–24 year olds) with greater frequency, or to target narrow geographic areas within a DMA. A small but significant price increase by broadcast television spot advertising providers would not be made unprofitable by advertisers switching to advertising on subscription television channels.

21. Internet-based media is not currently a substitute for broadcast television spot advertising. Although Online Video Distributors (“OVDs”) such as Netflix and Hulu are important sources of video programming, as with cable television advertising, the local video advertising of OVDs lacks the reach of broadcast television spot advertising. Non-video Internet advertising, e.g., website banner advertising, lacks the important combination of sight, sound, and motion that gives television its impact. Consequently, local media buyers currently purchase Internet-based advertising primarily as a supplement to broadcast television spot advertising, and a small but significant price increase by broadcast television spot advertising providers would not be made unprofitable by advertisers switching to Internet-based advertising.

22. In addition, broadcast television stations negotiate prices individually with advertisers; consequently, television stations can charge different advertisers different prices. Broadcast television stations generally can identify advertisers with strong preferences to advertise on broadcast television stations in their DMAs. Because of this ability to price discriminate among customers, broadcast television stations may target with higher prices advertisers that view broadcast television in their DMA as particularly effective for their needs, while maintaining lower prices for more price-sensitive advertisers. As a result, a hypothetical monopolist could profitably raise prices to those advertisers that view broadcast television as a

necessary advertising medium, either as their sole means of advertising or as a necessary part of a total advertising plan.

V. LIKELY ANTICOMPETITIVE EFFECTS

23. Broadcast television station ownership in each of the DMA Markets is already significantly concentrated. In each of these markets, four stations, each affiliated with a major network, had more than 90 percent of gross advertising revenues in 2014. In the South Bend, Indiana DMA the two stations that Gray and Schurz operate have approximately 67 percent of all television station gross advertising revenues in that DMA. In the Wichita, Kansas DMA the three stations that Gray and Schurz operate have approximately 57 percent of all television station gross advertising revenues in that DMA.

24. Market concentration is often one useful indicator of the likely competitive effects of a merger. Concentration in each of the DMA Markets would increase significantly as a result of the proposed acquisition.

25. As articulated in the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index (“HHI”) is a measure of market concentration. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition harming consumers. Mergers resulting in highly concentrated markets (with an HHI in excess of 2,500) that involve an increase in the HHI of more than 200 points are presumed to be likely to enhance market power under the merger guidelines.

26. The post-acquisition HHI in each of the DMA Markets would be over 2,500. In the South Bend, Indiana DMA, the post-acquisition HHI would be approximately 4,800. In the

Wichita, Kansas DMA, the post-acquisition HHI would be approximately 4,200. Those HHIs are well above the 2,500 threshold at which the Department normally considers a market to be highly concentrated. In addition, Gray's proposed acquisition of Schurz would result in a substantial increase in the HHIs set forth above in excess of the 200 points presumed to be anticompetitive under the merger guidelines.

27. In addition to increasing concentration in the DMA Markets, the proposed transaction combines stations that are close substitutes and vigorous competitors in markets with limited alternatives. In each of the DMA Markets, Defendants each have broadcast television stations that are affiliated with the major national television networks, ABC, CBS, NBC and FOX. In the South Bend, Indiana DMA, Schurz owns and operates WSBT-TV, a CBS affiliate; and Gray owns and operates WNDU-TV, an NBC affiliate. In the Wichita, Kansas DMA, Schurz owns and operates KWCH-DT, a CBS affiliate; and Gray owns and operates KAKE-TV, an ABC affiliate. Their respective affiliations with those networks, and their local news operations, provide the Defendants' stations with a variety of competing programming options that are often each other's next-best or second-best substitutes for many viewers and advertisers.

28. Advertisers benefit from Defendants' head-to-head competition in the sale of broadcast television spot advertising in the South Bend, Indiana DMA and the Wichita, Kansas DMA. Advertisers purposefully spread their advertising dollars across numerous spot advertising suppliers to reach their marketing goals most efficiently. After the proposed acquisition, advertisers in each of the DMA Markets would likely find it more difficult to "buy around" the Defendants' combined stations in response to higher advertising rates, than to "buy around" Gray's stations or Schurz's stations, as separate entities, as they could have done before the proposed acquisition. Because a significant number of advertisers would likely be unable to

reach their desired audiences as effectively unless they advertise on at least one station that Gray would control after the proposed acquisition, those advertisers' bargaining positions would be weaker, and the advertising rates they pay would likely increase.

29. De novo entry into the South Bend, Indiana DMA and the Wichita, Kansas DMA is unlikely. The FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal became available, commercial success would come, at best, over a period of many years. Thus, entry into each DMA Market's broadcast television spot advertising market would not be timely, likely, or sufficient to deter Gray from engaging in anticompetitive price increases or other anticompetitive conduct after the proposed acquisition occurs.

30. Other broadcast television stations in the South Bend, Indiana DMA and the Wichita, Kansas DMA likely would not increase their advertising capacity in response to a price increase by Gray. The number of 30-second spots in a DMA is largely fixed by programming and time constraints. This fact makes the pricing of spot advertising responsive to changes in demand. Adjusting programming in response to a pricing change is risky, difficult, and time-consuming. Network affiliates are often committed to the programming provided by the network with which they are affiliated, and it often takes years for a station to build its audience. Programming schedules are complex and carefully constructed, taking many factors into account, such as audience flow, station identity, and program popularity. In addition, stations typically have multi-year contractual commitments for individual shows. Accordingly, a television station is unlikely to change its programming sufficiently or with sufficient rapidity to overcome a small but significant price increase imposed by Gray.

31. Although Defendants assert that the proposed acquisition would produce efficiencies, they cannot demonstrate acquisition-specific and cognizable efficiencies that would be sufficient to offset the proposed acquisition's anticompetitive effects.

32. The effect of the proposed acquisition of Schurz by Gray would be to substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act.

VI. VIOLATIONS ALLEGED

33. The United States hereby repeats and realleges the allegations of paragraphs 1 through 32 as if fully set forth herein.

34. Gray's proposed acquisition of Schurz likely would substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed acquisition likely would have the following effects, among others:

- a. Competition in the sale of broadcast television spot advertising in each of the DMA Markets would be substantially lessened;
- b. Actual and potential competition among Gray and Schurz in the sale of broadcast television spot advertising in each of the DMA Markets would be eliminated; and
- c. Prices for spot advertising on broadcast television stations in each of the DMA Markets would likely increase, and the quality of services would likely decline.

VII. REQUEST FOR RELIEF

The United States requests:

- d. That the Court adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
- e. That the Court permanently enjoin and restrain Defendants from carrying out the transaction, or entering into any other agreement, understanding, or plan by which Gray would acquire Schurz;

- f. That the Court award the United States the costs of this action; and
- g. That the Court award such other relief to the United States as the Court may deem just and proper.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

_____/s/
William J. Baer (D.C. Bar #324723)
Assistant Attorney General

_____/s/
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Dated: December 22, 2015

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GRAY TELEVISION, INC., and
SCHURZ COMMUNICATIONS, INC.,

Defendants.

CASE NO. 1:15-cv-02232

JUDGE: Rudolph Contreras

FILED: 12/22/2015

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (“APPA” or “Tunney Act”), 15 U.S.C. § 16(b)-(h), plaintiff United States of America (“United States”) files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

Defendants Gray Television, Inc. (“Gray”) and Schurz Communications, Inc. (“Schurz”) entered into an Asset Purchase Agreement, dated September 14, 2015, pursuant to which Gray would acquire Schurz for approximately \$440 million. Defendants compete head-to-head in the sale of broadcast television spot advertising in the following Designated Market Areas (“DMAs”): South Bend, Indiana; and Wichita, Kansas (collectively “the DMA Markets”).

The United States filed a civil antitrust Complaint on December 22, 2015, seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition’s likely effect would

be to increase broadcast television spot advertising prices in each of the DMA Markets in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (“Hold Separate”) and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. The proposed Final Judgment, which is explained more fully below, requires Defendants to divest the following broadcast television stations (the “Divestiture Stations”) to Acquirers approved by the United States in a manner that preserves competition in each of the DMA Markets: WSBT-TV, located in the South Bend, Indiana DMA; and KAKE-TV, located in the Wichita, Kansas DMA. The Hold Separate requires Defendants to take certain steps to ensure that the Divestiture Stations are operated as competitively independent, economically viable, and ongoing business concerns, uninfluenced by the consummation of the acquisition so that competition is maintained until the required divestitures occur.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Acquisition

Gray is incorporated in the state of Georgia, with its headquarters in Atlanta, Georgia. Gray owns and operates broadcast television stations in 44 metropolitan areas. It owns and operates broadcast television stations in each of the DMA Markets.

Schurz is an Indiana corporation, with its headquarters in Mishawaka, Indiana. Schurz owns and operates 10 broadcast television stations in 7 metropolitan areas. It also owns and operates, or provides programming, operating, or sales services to broadcast television stations in each of the DMA Markets.

Pursuant to an Asset Purchase Agreement dated September 14, 2015, Gray agreed to acquire Schurz for approximately \$440 million.

Gray and Schurz compete head to head against one another for the business of local and national advertisers that seek to purchase television advertising time in each of the DMA Markets.

B. Anticompetitive Consequences of the Transaction

1. Broadcast Television Advertising

The Complaint alleges that the sale of broadcast television spot advertising to advertisers targeting viewers located in each of the DMA Markets constitutes a relevant product market for analyzing this acquisition under Section 7 of the Clayton Act. Gray and Schurz sell television advertising to local and national advertisers that seek to target viewers in each of the DMA Markets. A DMA is a geographical unit designated by the A.C. Nielsen Company, a company that surveys television viewers and furnishes broadcast television stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating television audiences. DMAs are widely accepted by television stations, advertisers, and advertising agencies as the standard geographic area to use in evaluating television audience size and demographic composition. A television station's advertising rates typically are based on the station's ability, relative to competing television stations, to attract viewing audiences that have certain demographic characteristics that advertisers are seeking to reach.

Gray's and Schurz's broadcast television stations in the DMA Markets generate almost all of their revenues by selling advertising to local and national advertisers who want to reach viewers present in those DMAs. Advertising placed on broadcast television stations in a DMA is aimed at reaching viewing audiences in that DMA, and television stations broadcasting outside that DMA do not provide effective access to these audiences.

Broadcast television spot advertising possesses a unique combination of attributes that sets it apart from advertising using other types of media. Because of this unique combination of attributes, broadcast television spot advertising has no close substitute for a significant number of advertisers.

Television combines sight, sound, and motion, thereby creating a more memorable advertisement when compared to other types of advertising. For example, radio spots lack the visual impact of television advertising; and newspaper and billboard ads lack sound and motion, as do many internet search engine and website banner ads.

Broadcast television spot advertising also generally reaches the largest percentage of potential customers in a targeted geographic area and is therefore especially effective in introducing, establishing, and maintaining a product's image.

Spot advertising differs from network and syndicated television advertising, which are sold on a nationwide basis by major television networks and by producers of syndicated programs and are broadcast in every market area in which the network or syndicated program is aired. Spot advertising on subscription television channels and internet-based video advertising also lacks the same reach as broadcast television spot advertising.

In addition, through information provided during individualized price negotiations, broadcast television stations can identify advertisers with strong preferences for using broadcast

television spot advertising and charge different prices to those advertisers. Consequently, if there were a small but significant and non-transitory increase in the price (“SSNIP”) of broadcast television spot advertising on broadcast television stations in the DMA Markets, advertisers would not reduce their purchases sufficiently to render the price increase unprofitable. Advertisers would not switch enough purchases of advertising time to television stations outside the DMA Markets, or to other media to render the price increase unprofitable.

2. Harm to Competition in Each of the DMA Markets

The Complaint alleges that the proposed acquisition likely would substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and likely would have the following effects, among others:

- a) competition in the sale of broadcast television spot advertising in each of the DMA Markets would be substantially lessened;
- b) competition between Gray broadcast television stations and Schurz broadcast television stations in the sale of broadcast television spot advertising in each of the DMA markets would be eliminated; and
- c) the prices for spot advertising on broadcast television stations in each of the DMA Markets likely would increase.

The acquisition, by eliminating Schurz as a separate competitor and combining its operations with Gray’s, would allow the combined entity to increase its market share of broadcast television spot advertising and revenues in each of the DMA Markets. In the South Bend, Indiana DMA, combining the two stations that Defendants operate would give Gray approximately 67 percent of all television station gross advertising revenues in that DMA. In the Wichita, Kansas DMA, combining the three stations that Defendants operate would give Gray approximately 57 percent of all television station gross advertising revenues in that DMA.

Gray's acquisition of Schurz would further concentrate the already highly concentrated broadcast television market in each of the DMA Markets. Using the Herfindahl-Hirschman Index ("HHI"), a standard measure of market, the post-acquisition HHI in each of the DMA Markets would be over 2,500. Gray's acquisition of Schurz would result in a substantial increase in the HHI set forth above for each DMA Market in excess of the 200 points presumed likely to enhance market power under the Horizontal Merger Guidelines issued by the Department of Justice and Federal Trade Commission.

Moreover, the acquisition combines stations that are close substitutes and vigorous competitors in a product market with limited alternatives. In each of the DMA Markets, Defendants have broadcast stations that are affiliated with the major national television networks, ABC, CBS, NBC, and FOX. Their respective affiliations with those networks, and their local news operations, provide Defendants' stations with a variety of competing programming options that are often each other's next-best or second-best substitutes for viewers and advertisers.

Finally, the Complaint alleges that entry or expansion in broadcast television spot advertising each of the DMA Markets would not be timely, likely, or sufficient to prevent any anticompetitive effects. New entry is unlikely because any new station would require an FCC license, which is difficult to obtain. Even if a new station became operational, commercial success would come over a period of many years. The number of 30-second spots available at a station is generally fixed. Accordingly, other television stations in each of the DMA Markets could not readily increase their advertising capacity in response to a small but significant price increase by Gray.

In summary, for all these reasons, the Complaint alleges that Gray's proposed acquisition of Schurz would substantially lessen competition in the sale of television spot advertising time to advertisers targeting viewers in each of the DMA Markets, eliminate head-to-head competition between Gray and Schurz television stations in those markets, and result in increased prices and reduced quality of service for television advertisers in each of those markets, all in violation of Section 7 of the Clayton Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in each of the DMA Markets by maintaining the Divestiture Stations as independent, economically viable competitors. The proposed Final Judgment requires Gray to divest WSBT-TV, located in South Bend, Indiana to Sinclair Broadcast Group; and KAKE-TV, located in Wichita, Kansas to Lockwood Broadcast Group. The United States has approved each of these divestiture buyers. The United States required Gray to identify each Acquirer of a Divestiture Station in order to provide greater certainty and efficiency in the divestiture process.

The "Divestiture Assets" are defined in Paragraph II. I of the proposed Final Judgment to include all assets, tangible or intangible, principally devoted to or necessary for the operation of the Divestiture Stations as viable, ongoing commercial broadcast television stations. With respect to each Divestiture Station, the divestiture will include assets sufficient to satisfy the United States, in its sole discretion, that such assets can and will be used to operate each station as a viable, ongoing, commercial television business.

To ensure that the Divestiture Stations are operated independently from Gray after the divestitures, Sections IV and XI of the proposed Final Judgment prohibit Defendants from

entering into any agreements during the term of the Final Judgment that create a long-term relationship with or any entanglements that affect competition between Gray and an Acquirer of a Divestiture Station concerning the Divestiture Assets after the divestitures are completed. Examples of prohibited agreements include agreements to reacquire any part of the Divestiture Assets, agreements to acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, agreements to enter into any time brokerage agreement, local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement, or agreements to conduct other business negotiations jointly with the Acquirer(s) with respect to the Divestiture Assets, or providing financing or guarantees of financing with respect to the Divestiture Assets, during the term of the Final Judgment. The time brokerage agreement prohibition does not preclude Defendants from entering into an agreement pursuant to which an Acquirer can begin operating a Divestiture Station immediately after the Court's approval of the Hold Separate in this matter, so long as the agreement with the Acquirer expires upon the consummation of a final agreement to divest the Divestiture Assets to the Acquirer.

Defendants are required to take all steps reasonably necessary to accomplish the divestitures quickly and to cooperate with prospective purchasers. Because transferring the broadcast license for each of the Divestiture Stations requires FCC approval, Defendants are specifically required to use their best efforts to obtain all necessary FCC approvals as expeditiously as possible. The divestiture of each of the Divestiture Stations must occur within 90 calendar days after the filing of the Complaint in this matter. If applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirers of the Divestiture Assets, but an order or other dispositive action by the

FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of the Divestiture Assets for which no FCC order has issued until 5 calendar days after such order is issued. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 90 calendar days in total, and shall notify the Court in such circumstances.

In the event that Defendants do not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court, upon application of the United States, will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Gray will pay all costs and expenses of the trustee. The trustee's commission will be structured to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States describing his or her efforts to accomplish the divestiture of any remaining stations. If the divestiture has not been accomplished after 6 months, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act,

15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

**V. PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT**

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the United States Department of Justice, Antitrust Division's Internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

David C. Kully
Chief, Litigation III Section
Antitrust Division
United States Department of Justice
450 5th Street, N.W. Suite 4000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and Defendants may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Gray's acquisition of Schurz. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the sale of broadcast television spot advertising in each of the DMA Markets. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court’s inquiry is necessarily a limited one as the government is entitled to “broad discretion to settle with the defendant within the reaches of the public interest.” *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc’ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the “court’s inquiry is limited” in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court’s review of a consent judgment is limited and only inquires “into whether the government’s determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.”).¹

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government’s complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the

¹ The 2004 amendments substituted “shall” for “may” in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004) *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc’ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments “effected minimal changes” to Tunney Act review).

adequacy of the relief secured by the decree, a court may not “engage in an unrestricted evaluation of what relief would best serve the public.” *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court’s role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is “*within the reaches of the public interest*.” More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).² In determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” *SBC Commc’ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government’s predictions as to the effect of the proposed remedies”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States’ prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

² *Cf. BNS*, 858 F.2d at 464 (holding that the court’s “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist’s reducing glass”). *See generally Microsoft*, 56

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft*, 56 F.3d at 1461); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

Moreover, the Court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government’s decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (“the ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”). Because the “court’s authority to review the decree depends

F.3d at 1461 (discussing whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest’”).

entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the Court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.³ A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76.

³ *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 22, 2015

Respectfully submitted,

/s/ Mark A. Merva

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competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D.Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93-298, at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GRAY TELEVISION, INC., and
SCHURZ COMMUNICATIONS, INC.,

Defendants.

CASE NO. 1:15-cv-02232

JUDGE: Rudolph Contreras

FILED: 12/22/2015

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, the United States of America, filed its Complaint on December 22, 2015, and Defendant Gray Television, Inc. (“Gray”) and Defendant Schurz Communications, Inc. (“Schurz”), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. DEFINITIONS

As used in this Final Judgment:

A. “Gray” means Defendant Gray Television, Inc., a Georgia corporation headquartered in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Schurz” means Defendant Schurz Communications, Inc., a Indiana corporation headquartered in Mishawaka, Indiana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Sinclair” means Sinclair Broadcast Group, Inc., a Maryland corporation headquartered in Hunt Valley, Maryland, its successor and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Lockwood” means Lockwood Broadcast Group, a Virginia corporation headquartered in Hampton, Virginia, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Acquirer” means Sinclair, Lockwood, or another entity to which Defendants divest any of the Divestiture Assets.

F. “DMA” means Designated Market Area as defined by A.C. Nielsen Company based upon viewing patterns and used by the *Investing in Television BIA Market Report 2015* (1st edition). DMAs are ranked according to the number of households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating television audience size and composition.

G. “WSBT-TV” means the CBS-affiliated broadcast television station located in the South Bend, Indiana DMA owned by Defendant Schurz.

H. “KAKE-TV” means the ABC-affiliated broadcast television station located in the Wichita, Kansas DMA owned by Defendant Gray.

I. “Divestiture Assets” means the WSBT-TV and KAKE-TV broadcast television stations and all assets, tangible or intangible, principally devoted to or necessary for the operations of the stations as viable, ongoing commercial broadcast television stations, including, but not limited to, all real property (owned or leased), all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property; all licenses, permits, authorizations, and applications therefore issued by the Federal Communications Commission

(“FCC”) and other government agencies related to the stations; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases, and commitments and understandings of Defendants; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to the stations; all customer lists, contracts, accounts, and credit records; and all logs and other records maintained by Defendants in connection with the stations.

III. APPLICABILITY

A. This Final Judgment applies to Defendants, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Defendants’ Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirers of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURES

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to one or more Acquirers acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances. With respect to divestiture of the Divestiture Assets by Defendants or a trustee

appointed pursuant to Section V of this Final Judgment, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirers of the Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of the Divestiture Assets for which no FCC order has issued until five (5) days after such order is issued. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible, including using their best efforts to obtain all necessary FCC approvals as expeditiously as possible. This Final Judgment does not limit the FCC's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this Final Judgment.

B. In the event that Defendants are attempting to divest assets related to WSBT-TV to an Acquirer other than Sinclair, or assets related to KAKE-TV to an Acquirer other than Lockwood:

- (1) Defendants, in accomplishing the divestitures ordered by this Final Judgment, promptly shall make known, by usual and customary means, the availability of the Divestiture Assets not yet divested;
- (2) Defendants shall inform any person making an inquiry regarding a possible purchase of the applicable Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment;
- (3) Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating

to the applicable Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine; and

- (4) Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirers and the United States information relating to the personnel involved in the operation and management of the applicable Divestiture Assets to enable the Acquirers to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirers to employ or contract with any employee of any Defendant whose primary responsibility relates to the operation or management of the applicable Divestiture Assets.

D. Defendants shall permit the prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the applicable stations; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirers that each Divestiture Asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. At the option of the Acquirer(s), Defendants shall enter into a transition services agreement with the Acquirer(s) for a period of up to six (6) months to facilitate the continuous operations of the Divestiture Assets until the Acquirer can provide such capabilities

independently. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions and shall be subject to the approval of the United States, in its sole discretion. Additionally, the United States in its sole discretion may approve one or more extensions of this agreement for a total of up to an additional six (6) months.

H. Defendants shall warrant to the Acquirers that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that, following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets and be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirers as part of a viable, ongoing commercial television broadcasting business. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable, and the divestiture of such assets will achieve the purposes of this Final Judgment and remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

- (1) shall be made to Acquirers that, in the United States' sole judgment, have the intent and capability (including the necessary managerial, operational,

technical, and financial capability) of competing effectively in the commercial television broadcasting business; and

- (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between Acquirers and Defendants gives Defendants the ability unreasonably to raise any of the Acquirers' costs, to lower any of the Acquirers' efficiency, or otherwise to interfere in the ability of any of the Acquirers to compete effectively.

V. APPOINTMENT OF TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants shall notify the United States of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets that have not yet been divested.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the applicable Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms

and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The trustee shall account for all monies derived from the sale of the applicable Divestiture Assets and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets subject to sale by the trustee and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the trustee and Defendants are unable to reach agreement on the trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other agents retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the trustee's efforts to accomplish the applicable divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. Such report shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the applicable Divestiture Assets.

G. If the trustee has not accomplished any applicable divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The

trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

H. If the United States determines that the trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirers. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. HOLD SEPARATE

Until the divestitures required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V of this Final Judgment, Defendants shall deliver to the United States an affidavit

as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, including efforts to secure FCC or other regulatory approvals, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitations on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Each such affidavit shall also include a description of the efforts Defendants have taken to complete the sale of the Divestiture Assets, including efforts to secure FCC or other regulatory approvals. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

- (1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copies or electronic copy of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and
- (2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(g) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. NO REACQUISITION OR OTHER PROHIBITED ACTIVITIES

Defendants may not (1) reacquire any part of the Divestiture Assets, (2) acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, (3) enter into any local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement, or conduct other business negotiations jointly with the Acquirers with respect to the Divestiture Assets, or (4) provide financing or guarantees of financing with respect to the Divestiture Assets, during the term of this Final Judgment. The shared services prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (1) share news helicopters or (2) pool generic video footage that does not include recording a reporter or other on-air talent, and does not preclude Defendants from entering into any non-sales-related

shared services agreement or transition services agreement that is approved in advance by the United States in its sole discretion.

XII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of
Antitrust Procedures and Penalties Act,
15 U.S.C. § 16

United States District Judge